

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Docket No. 08-1411-US)**

In re Application of:

Schultz et al.

Serial No.: 10/625,799

Filed: July 23, 2003

**Title: Method for Mitigating Adverse
Processor Loading in a Personal
Computer Implementation of a
Wireless Local Area Network**

Confirmation Number: 9023

Art Unit: 2456

Examiner: Matthew D. Sandifer

Mail Stop Patent Ext.
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

Applicant requests reconsideration of the patent term adjustment in light of the Federal Circuit's recent decision in *Wyeth v. Kappos*. Applicant respectfully submits that, should the patent issue on the projected issue date indicated by the Determination of Patent Term Adjustment mailed by the Office on January 27, 2010, the correct patent term adjustment should be 1,218 days.

Applicant generally authorizes the Office to charge any underpayment or credit any overpayment to Deposit Account No. 132490, and to treat this or any subsequent communication that requires an extension of time as incorporating a request for such an extension.

1. Calculation of Patent Term Adjustment

Time period and description	(A) delay	(B) delay	(A) \cap (B)	Patentee delay
09/23/2004 – 05/31/2007 <i>Failure to mail a notification within fourteen months from filing date</i>	980 days			
2/15/2008 – 04/02/2008 <i>Failure to respond to reply within four months</i>	47 days			
07/23/2006 – 06/24/2008 <i>Failure to issue patent within three years of filing date</i>		702 days		
07/23/2006 – 05/31/2007 <i>Overlap</i>			312 days	
10/15/2007 – 04/02/2008 <i>Overlap</i>			170 days	
10/13/2007 – 10/15/2007 <i>Failure to respond to Office action within three months</i>				2 days
1/10/2008 – 02/06/2009 <i>Failure to respond to Office action within three months</i>				27 days
Total Patent Term Adjustment	1,027	+ 702	- 482	- 29
	= 1,218			

a. Calculation of (A) delay

i. 09/23/2004 through 05/31/2007

Pursuant to 37 C.F.R. 1.702(a)(1), the office is required to mail an action or a notice of allowance within fourteen months of the filing date of the application. The present application was filed on July 23, 2003, and thus fourteen months after the filing date is September 23, 2004. The first action was mailed by the office on May 31, 2007. Accordingly, the period of adjustment includes the 980 days between September 23, 2004 and May 31, 2007.

ii. 10/15/2007 – 04/02/2008

Pursuant to 37 C.F.R. 1.702(a)(2), the office is required to mail an action or a notice of allowance within four months of the date of a reply to a non-final office action. Applicant filed a response to a non-final office action October 15, 2007, and thus four months after the reply date

is February 15, 2008. The office mailed a final office action on April 2, 2008. Accordingly, the period of adjustment includes the 47 days between February 15, 2008 and April 2, 2008.

b. Calculation of (B) Delay: 07/23/2006 – 06/24/2008

Pursuant to 37 C.F.R. 1.702(b)(1), the office is required to issue a patent within three years of the filing date of the application, but the period of adjustment shall not include the period beginning on the date on which a request for continued examination was filed and ending on the date the patent was issued. The present application was filed on July 23, 2003, and thus three years after the filing date is July 23, 2006. The patent has not yet issued, but a request for continued examination was filed on June 24, 2008, and thus the delay period under 37 C.F.R. 1.702(b)(1) cannot extend beyond June 24, 2008. Accordingly, the period of adjustment includes the 702 days between July 23, 2006 and June 24, 2008.

c. Overlapping periods of delay

Pursuant to 37 C.F.R. 1.702(f), to the extent that periods of delay attributable to the grounds specified in § 1.702 overlap, the period of adjustment shall not exceed the actual number of days the issuance of the patent was delayed. Accordingly, because the periods of delay between September 23, 2004 and May 31, 2007, and between October 15, 2007 and April 2, 2008 overlap, the sum of the (A) delay and (B) delay calculated above should be reduced by the 312 days between September 23, 2004 and May 31, 2007, and further reduced by the 170 days between October 15, 2007 and April 2, 2008.

d. Patentee delay

Applicant does not dispute the Office's determination that the patentee delayed a total of 29 days.

2. Requested Patent Term Adjustment

Applicant submits that the present application is entitled to the sum of (A) delay and (B)

delay minus any overlap which occurs on the same calendar days and minus any patentee delay. The total (A) delay is $980 + 47 = 1,027$ days, and the total (B) delay is 702 days. There is an overlap of $312 + 170 = 482$ days between the (A) delay and (B) delay periods, and Applicant does not dispute the Office's determination that the patentee delayed a total of 29 days. Accordingly, Applicant submits that the total patent term adjustment should be $1,027 \text{ days} + 702 \text{ days} - 482 \text{ days} - 29 \text{ days} = 1,218$ days. Thus Applicant respectfully requests a total patent term adjustment of 1,218 days.

3. Conclusion

Applicant respectfully requests a total patent term adjustment of 1,218 days. Should the Office have any questions, the Office is encouraged to contact the undersigned at 312-913-3309.

Respectfully submitted,

**McDONNELL BOEHNEN
HULBERT & BERGHOFF LLP**

Date: April 22, 2010

By: /Alan W. Krantz/
Alan W. Krantz
Reg. No. 64,900